DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
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DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH Petitioner, v. ARNIDA LAMONT and ZENOBIA WADE Respondents	Case Nos.: I-00-40381 I-00-40946 I-00-40334 I-00-40928 I-00-40929 I-00-40936 I-00-40937 I-00-40938

ORDER DENYING RESPONDENTS' APPLICATION TO VACATE SETTLEMENT AGREEMENT AND DISMISS CHARGES

On August 17, 2001, this administrative court received a memorandum from the Government advising this administrative court on behalf of itself and *pro se* Respondents Arnida Lamont and Zenobia Wade that a settlement agreement had been reached in the captioned matters. The Government's August 17, 2001 Memorandum is attached to this order.

Under the terms of the agreement, Respondents agreed to amend their previously entered pleas of "Deny" pursuant to D.C. Official Code § 2-1802.02(3) to pleas of "Admit" pursuant to D.C. Official Code § 2-1802.02(1) to Notices of Infraction I-00-40381 (first)/I-00-40946 (second) and I-00-40936, and to pay $1200 in fines as set forth in those Notices. In exchange, the Government agreed to dismiss all charges set forth in Notices of Infraction I-00-40334, I-00-40928, I-00-40929, I-00-40937 and I-00-40938. Accompanying the Government's memorandum was a letter from Respondent Lamont requesting the pleas be amended as

indicated, and also stating that, "I'll agree to pay adjusted fine by September 12, 2001." A copy of Respondent's letter is attached to this order. Also accompanying the Government's memorandum were summary motions to dismiss Notices of Infraction I-00-40334, I-00-40928, I-00-40929, I-00-40937 and I-00-40938, all of which were granted by this administrative court on August 17, 2001.

Respondents' payment was not received by this administrative court by September 12, 2001. Instead, on September 28, 2001, this administrative court received Respondents' "Statement of Facts and Petition for Waiver of Fines." In their submission, Respondents complained of the Government's "arbitrary and subjective" inspection standards, as well as its "unreasonable approach" to the settlement agreement. Respondents requested that, in light of the allegedly unsubstantiated nature of the violations at issue and the "undue financial burden on our business," the previously agreed to $1200 in fines be set aside. I construe Respondents' September 28, 2001 submission as an application to vacate the settlement agreement and dismiss the charges set forth in the captioned Notices of Infraction. *See Dilal v. Kaplan* 956 F.2d 856, 857 (8th Cir. 1992) (supporting liberal construction of *pro se* motions); *Badde v. Strickland,* 175 F.R.D. 403, 404 n.1 (D.D.C. 1997) (*pro se* submissions should be liberally construed by trial courts).

On October 1, 2001, this administrative court received the Government's response to Respondents' application. In its submission, the Government provided detailed accounts of the

nature of the violations cited in the captioned Notices of Infraction, as well as the negotiations surrounding the settlement agreement. The Government noted that the $1200 in fines previously agreed to by Respondents already represented a substantial reduction from the $2800 in fines originally sought, and, given the large number of facilities operated by Respondents and the revenue those facilities generated, no further reduction was warranted. The Government stated that it would not oppose, however, a reasonable installment plan if requested by Respondents.

It is well settled that the voluntary settlement of civil controversies such as this is "in high judicial favor." *Suitland Parkway Overlook Tenants Assoc. v. Cooper*, 616 A.2d 346, 349 (D.C. 1992). To encourage such voluntary settlement, settlement agreements should be enforced by their terms, and should not be modified in either party's favor absent the "most compelling reasons," *e.g.*, fraud, duress, or mutual mistake. *Id.; see also Fields v. McPherson*, 756 A.2d 420, 426 (D.C. 2000).

As reflected in the Government's August 17, 2001 memorandum and Respondents' letter attached thereto, the parties entered into a binding agreement to settle the instant matters. This administrative court relied upon that agreement in granting the Government's summary dismissal motions for Notices of Infraction I-00-40334, I-00-40928, I-00-40929, I-00-40937 and I-00-40938. Respondents claim no fraud or mistake that would warrant modifying the agreement. *See Suitland Parkway Overlook Tenants Assoc.,* 616 A.2d at 349. And while Respondents state in their September 28, 2001 application that the Government's approach during negotiations left them feeling "intimidated," inequality of bargaining power (as occurs frequently in cases in

which a party is charged with unlawful conduct) does not rise to the level of legal duress as Respondents always had a reasonable alternative to settlement: they could have simply denied all charges and presented their defense in a hearing before this administrative court pursuant to D.C. Official Code § 2-1802.02(3). *See Restatement (Second) of Contracts* § 175(1) & cmt. b (1981) (noting that threat of litigation is not duress because there is the opportunity to present a defense); *Leslie v. LaPrade*, 726 A.2d 1228, 1233 (D.C. 1999) (citing § 175 of the Restatement in determining duress for contract avoidance purposes).

Respondents were not obligated to enter into a settlement agreement with the Government of the captioned matters. Having opted for settlement, however, the parties must abide by that agreement.

It is, therefore, this ____ day of _____, 2002

ORDERED, that Respondent's September 28, 2001 application to vacate the settlement agreement and dismiss the charges set forth in Notices of Infraction I-00-40381, I-00-40946, I-00-40936, I-00-40334, I-00-40928, I-00-40929, I-00-40937 and I-00-40938 is hereby **DENIED**; and it is further

ORDERED, that Respondents, who are jointly and severally liable, shall pay a total of **ONE THOUSAND TWO HUNDRED DOLLARS ($1200)** in accordance with the attached

instructions within twenty (20) calendar days of the date of service of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05 (2001 ed.); and it is further

ORDERED, that if the Respondents fail to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, starting from the date of this Order, pursuant to section 203(i)(1) of the Civil Infractions Act, as amended by the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, D.C. Law 13-281, effective April 27, 2001, codified as D.C. Official Code § 2-1802.03(i)(1) (2001 ed.) ; and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Official Code § 2-1802.03(f) (2001 ed.), the placement of a lien on real and personal property owned by Respondents pursuant to D.C. Official Code § 2-1802.03(i) (2001 ed.) and the sealing of Respondents' business premises or work sites pursuant to D.C. Official Code § 6-1801.03(b)(7) (2001 ed.).

/s/ 12/31/01

Mark D. Poindexter
Administrative Judge